

## Department of Labor

## Pt. 2933

(b) Requests for waivers under paragraph (a) of this subsection must be prepared by the contracting officer as prescribed in FAR 30.201-5(e) and submitted to the HCA.

### **PART 2931—CONTRACT COST PRINCIPLES AND PROCEDURES**

#### **Subpart 2931.1—Applicability**

Sec.

2931.101 Objectives.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

#### **Subpart 2931.1—Applicability**

##### **2931.101 Objectives.**

Individual and class deviations from cost principles in FAR part 31 must be processed as prescribed in DOLAR subpart 2901.4.

[69 FR 22991, Apr. 27, 2004]

### **PART 2932—CONTRACT FINANCING**

#### **Subpart 2932.4—Advance Payments for Non-Commercial Items**

Sec.

2932.402 General.

2932.407 Interest.

#### **Subpart 2932.7—Contract Funding.**

2932.703 Contract funding requirements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

#### **Subpart 2932.4—Advance Payments for Non-Commercial Items**

##### **2932.402 General.**

The HCA is authorized to approve determinations and findings as well as contract terms for advance payments. The contracting officer must submit a recommendation for approval or disapproval of the contractor's request to the HCA.

##### **2932.407 Interest.**

The HCA may authorize advance payments without interest pursuant to FAR 32.407.

#### **Subpart 2932.7—Contract Funding**

##### **2932.703 Contract funding requirements.**

(a) Except in unusual circumstances, the contracting office may not issue solicitations until an approved procurement request (PR), containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract obligation before receipt of the PR certifying that funds are available when:

(1) The Assistant Secretaries, Inspector General, Bureau Chief, Deputy Under Secretary, Solicitor of Labor, Commissioner, or Director of the Women's Bureau certifies that such action is necessary to meet critical program schedules for their program area;

(2) The Budget Officer certifies that program authority has been issued and funds to cover the acquisition will be available before the date set for receipt of proposals;

(3) The solicitation includes the clause at FAR 52.232-18, Availability of Funds.

(b) The contracting office may not open bids/close solicitations until a PR, either planning or final, has been received that contains a certification of fund availability. Only the project or program official with the authority to commit funds from the agency that initiated the PR may make that written certification.

(c) The project or program office that initiated the PR is responsible for obtaining required certifications.

### **PART 2933—PROTESTS, DISPUTES, AND APPEALS**

#### **Subpart 2933.1—Protests**

Sec.

2933.102 General.

2933.103 Protests to the agency.

2933.104 Protests to GAO.

#### **Subpart 2933.2—Disputes And Appeals**

2933.203 Applicability.

## 2933.102

- 2933.209 Suspected fraudulent claims.  
2933.211 Contracting officer's decision.  
2933.212 Contracting officer's duties upon appeal.  
2933.213 Obligation to continue performance.  
2933.270 Department of Labor Board of Contract Appeals.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c); E.O. 12979, 60 FR 55171, 3 CFR, 1995 Comp., p. 417.

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

### Subpart 2933.1—Protests

#### 2933.102 General.

(a) The Division of Acquisition Management Services, 200 Constitution Ave., NW., S-1513 B, Washington, DC 20210-0001, telephone (202) 693-7285, facsimile (202) 693-7290 (or the Office acting in that capacity), is responsible for coordinating procurement protests filed with the General Accounting Office.

(b) The authority of the Assistant Secretary for Administration and Management under FAR 33.102(b) to determine that a solicitation, proposed award, or award does not comply with the requirements of law or regulation may be delegated to the HCA.

#### 2933.103 Protests to the agency.

(a) In accordance with Executive Order 12979, the following procedures apply to agency protests:

(1) The filing time frames in FAR 33.103(e) apply to agency protests. An agency protest is filed when the protest complaint is received at the location the solicitation designates for serving protests; or if none is designated, when filed with a contracting officer or HCA.

(2) An interested party filing an agency protest may request either that the contracting officer or the Agency Protest Official decide the protest. The "Agency Protest Official" is an individual above the level of the contracting officer and designated by the Assistant Secretary for Administration and Management, such as the Competition Advocate. The deciding official, whether a contracting officer or Agency Protest Official, must work in consultation with the Office of the Solicitor to resolve the protest.

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(3) In addition to the information required by FAR 33.103(d)(2), the protest must:

(i) Indicate that it is a protest to the agency;

(ii) Be contemporaneously filed with the contracting officer;

(iii) State whether the protestor chooses to have the contracting officer or the Agency Protest Official decide the protest. If the protest is silent on this matter, the contracting officer will decide the protest.

(b) "Interested Party" means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(c) If the Agency Protest Official is chosen by the protestor to decide the protest, this is an alternative to a decision by the contracting officer, not an appeal. The Agency Protest Official will not consider appeals from a contracting officer's decision on an agency protest.

(d) The deciding official should consider conducting a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference will establish deadlines for written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. Alternative Dispute Resolution techniques will be considered if determined appropriate by the deciding official.

(e) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.

(f) Apart from its protest document, the protestor will be given only one opportunity to support or explain in writing the substance of its protest. Department of Labor procedures do not provide for any discovery. The deciding official has discretion to request additional information from either the agency or the protestor. However, the deciding official will normally decide protests on the basis of information provided by the protestor and the agency.

(g) The preferred practice is to resolve protests through informal oral discussion.